

**Subpart D—Due Diligence Petitions**

- 60.30 Filing, format, and content of petitions.
- 60.32 Applicant response to petition.
- 60.34 FDA action on petitions.
- 60.36 Standard of due diligence.

**Subpart E—Due Diligence Hearings**

- 60.40 Request for hearing.
- 60.42 Notice of hearing.
- 60.44 Hearing procedures.
- 60.46 Administrative decision.

**AUTHORITY:** Secs. 409, 505, 507, 515, 520, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 357, 360e, 360j, 371, 379e); sec. 351 of the Public Health Service Act (42 U.S.C. 262); 35 U.S.C. 156.

**SOURCE:** 53 FR 7305, Mar. 7, 1988, unless otherwise noted.

**Subpart A—General Provisions****§ 60.1 Scope.**

(a) This part sets forth procedures and requirements for the Food and Drug Administration's review of applications for the extension of the term of certain patents under 35 U.S.C. 156. Patent term restoration is available for certain patents related to drug products (as defined in 35 U.S.C. 156(f)(2)), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act. Food and Drug Administration actions in this area include:

- (1) Assisting the United States Patent and Trademark Office in determining eligibility for patent term restoration;
- (2) Determining the length of a product's regulatory review period;
- (3) If petitioned, reviewing and ruling on due diligence challenges to the Food and Drug Administration's regulatory review period determinations; and
- (4) Conducting hearings to review initial Food and Drug Administration findings on due diligence challenges.

(b) References in this part to the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

[53 FR 7305, Mar. 7, 1988, as amended at 57 FR 56261, Nov. 27, 1992]

**§ 60.2 Purpose.**

(a) The purpose of this part is to establish a thorough yet efficient process for the Food and Drug Administration review of patent term restoration applications. To achieve this purpose, the regulations are intended to:

- (1) Facilitate determinations of patent term restoration eligibility and regulatory review period length, and
- (2) Ensure that parties interested in due diligence challenges will have an opportunity to participate in that process, including informal hearings.

(b) The regulations are intended to complement those promulgated by the United States Patent and Trademark Office to implement those parts of the law which are under that agency's jurisdiction. These regulations shall be construed in light of these objectives.

**§ 60.3 Definitions.**

(a) The definitions contained in 35 U.S.C. 156 apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:

(1) The term *Act* means the Federal Food, Drug, and Cosmetic Act (secs. 201-901, 52 Stat. 1040 *et seq.* as amended (21 U.S.C. 301-392)).

(2) *Active ingredient* means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or of animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

(3) *Applicant* means any person who submits an application or an amendment or supplement to an application under 35 U.S.C. 156 seeking patent term restoration.

(4) *Application* means an application for patent term restoration submitted under 35 U.S.C. 156.

(5) *Clinical investigation or study* means any experiment that involves a test article and one or more subjects and that is either subject to requirements for prior submission to the Food and Drug Administration under section